

GAO

Briefing Report to the Chairman,
Committee on Ways and Means, House of
Representatives

June 2000

WORLD TRADE ORGANIZATION

U.S. Experience to Date in Dispute Settlement System



DISTRIBUTION STATEMENT A
Approved for Public Release
Distribution Unlimited

20000619 112



G A O

Accountability * Integrity * Reliability

GAO/NSIAD/OGC-00-196BR

DTIC QUALITY INSPECTED 4

Contents

Letter		3
Briefing Section	Briefing Section I: WTO Members' Use of Dispute Settlement System	8
	Briefing Section II: WTO Dispute Settlement Cases Involving the United States	12
Appendixes	Appendix I: Commercial Consequences in 42 WTO Dispute Settlement Cases Involving the United States	30
	Appendix II: Objectives, Scope, and Methodology	34
	Appendix III: GAO Contact and Staff Acknowledgments	36
Tables	Table 1: Breakdown of 14 Cases the United States Filed, With Commercial Benefits	30
	Table 2: Breakdown of Nine Cases the United States Filed, With Limited Commercial Effects	31
	Table 3: Commercial Stakes and Outcome of 11 Cases Resolved Without a Ruling, or Where United States Prevailed	32
	Table 4: Commercial Effects of Six Cases Where the United States Did Not Prevail	33

Abbreviations

DRAM	Dynamic Random Access Memory
EPA	Environmental Protection Agency
EU	European Union
WTO	World Trade Organization



United States General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-285559

June 14, 2000

The Honorable Bill Archer
Chairman, Committee on Ways and Means
House of Representatives

Dear Mr. Chairman:

The World Trade Organization (WTO) provides the institutional framework for the multilateral trading system. Established on January 1, 1995, as a result of the Uruguay Round of international trade negotiations, the WTO administers rules for international trade and provides a forum for conducting trade negotiations. For the first time, the 1994 Uruguay Round agreements brought agriculture and services under the discipline of multilateral trade rules, as well as intellectual property rights and trade-related investment. In addition, the Uruguay Round agreements established a new dispute settlement system, replacing that under the General Agreement on Tariffs and Trade, the predecessor to the WTO.

The WTO dispute settlement system provides a multilateral forum for resolving trade disputes among WTO members and operates through four major phases: consultation, panel review, appellate body review (when parties appeal the panel ruling), and implementation of the ruling. The new system has several important features. It discourages stalemate by not allowing losing parties to block decisions; sets firm timetables for completing litigation of cases; and establishes a standing appellate body, which helps make the dispute settlement process more stable and predictable. Finally, should a WTO member decide not to fully comply with a WTO dispute settlement ruling, the system allows that party to accept retaliation or provide compensation as alternatives. While the new dispute settlement system facilitates the resolution of specific trade disputes, it also serves as a vehicle for upholding trade rules and preserving the rights and obligations of WTO members under the WTO agreements. Finally, the system clarifies the provisions of specific WTO agreements and provides a climate of greater legal certainty in which trade can occur.

We recently briefed your staff on the WTO's dispute settlement system, focusing on member countries' use of the system since its founding over 5 years ago. Specifically, we examined (1) how WTO members have used the new system, focusing primarily on cases involving the United States

and (2) the impact of these cases on foreign trade practices and U.S. laws and regulations, and their overall commercial effects. This report summarizes the contents of our briefing. In addition, per your request, we will be issuing a more in depth report in August on the WTO dispute settlement system, including an analysis of major issues that have arisen in its use.

Results in Brief

WTO member countries have actively used the WTO dispute settlement system during its first 5 years, filing 187 complaints as of April 2000.¹ The United States and the European Union were the most active participants, both as plaintiffs and defendants. In the 42 cases involving the United States that had either reached a final WTO decision or were resolved without a ruling, we found that the United States has served as plaintiff in 25 cases and defendant in 17 cases. As a plaintiff, the United States prevailed in a final WTO dispute settlement ruling in 13 cases, resolved the dispute without a ruling in 10 cases, and did not prevail in 2 cases. As a defendant, the United States prevailed in 1 case, resolved the dispute without a ruling in 10 cases, and lost in 6 cases.

Overall, our analysis shows that the United States has gained more than it has lost in the WTO dispute settlement system to date. WTO cases have resulted in a substantial number of changes in foreign trade practices, while their effect on U.S. laws and regulations has been minimal. In about three-quarters of the 25 cases filed by the United States, other WTO members agreed to change their practices, in some instances offering commercial benefits to the United States. For example, in response to a 1998 WTO ruling on Japanese distilled liquor taxes, Japan accelerated its tariff elimination and reduced discriminatory taxes on competing alcohol imports. The year following the resolution of the case, U.S. exports of whiskey to Japan, one of the largest U.S. markets for distilled spirits, increased by 18 percent, or \$10 million. As for the United States, in 5 of the 17 cases in which it was a defendant, two U.S. laws, two U.S. regulations, and one set of U.S. guidelines were changed or subject to change.² These changes have been relatively minor to date and the majority of them have

¹The 187 complaints filed as of April 18, 2000, excludes five cases in which there were co-complainants (more than one country filing a complaint on the same case).

²Although guidelines are often general statements that do not impose particular directions, sometimes they are specific and binding and essentially equivalent to regulations.

had limited or no commercial consequences for the United States.³ For example, in one case challenging increased U.S. duties on Korean semiconductor imports, the United States took action to comply with the WTO ruling while still maintaining the duties.

Agency Comments and Our Response

We obtained oral comments on a draft of this report from the Assistant U.S. Trade Representative for Monitoring and Enforcement in the Office of the United States Trade Representative. The Office generally agreed with the conclusions in this report and provided us technical and clarifying comments, which we incorporated as appropriate.

Briefing Section I provides aggregate data on WTO member countries' participation in the WTO dispute settlement system since its inception in 1995. Briefing section II provides information and analysis on completed WTO dispute settlement cases involving the United States, including resulting agreed-to changes in foreign trade practices and U.S. laws and regulations and the commercial effects involved. Appendix I provides further details on the commercial consequences of the cases involving the United States. Appendix II contains a description of our scope and methodology.

We are sending copies of this report to the Honorable Charlene Barshefsky, the U.S. Trade Representative; the Honorable William M. Daley, Secretary of Commerce; the Honorable Dan Glickman, Secretary of Agriculture; the Honorable Lawrence F. Summers, Secretary of the Treasury; and interested congressional committees. Copies will also be made available to other interested parties on request.

³In one recent case involving U.S. tax treatment of foreign sales corporations, the WTO decided that the tax provisions were prohibited export subsidies. The commercial consequences of this decision are potentially high, but the United States has not fully determined how it will implement the decision.

If you or your staff have any questions about this report, please contact me at (202) 512-4128. An additional GAO contact and staff acknowledgments are listed in appendix III.

Sincerely yours,

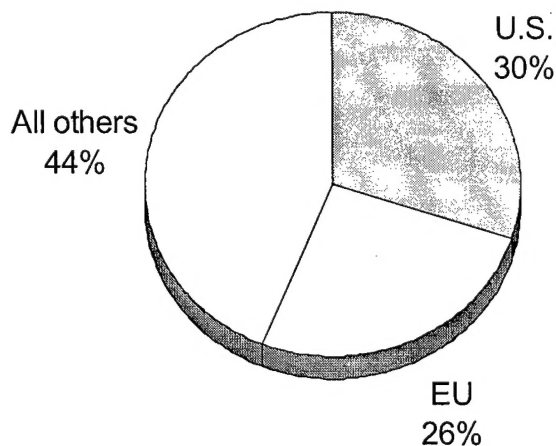
Susan S. Westin

Susan S. Westin, Associate Director
International Relations and Trade Issues

WTO Members' Use of Dispute Settlement System



WTO Members' Share of 187 Complaints Filed, 1995-2000



Legend: EU = European Union

Note: The 187 cases filed as of April 18, 2000 excludes five cases in which there were co-complainants (more than one country filing a complaint on the same case).

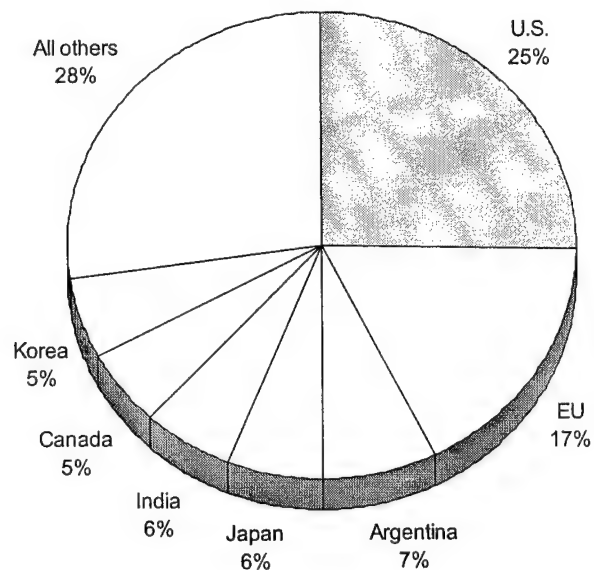
Source: WTO data.

Briefing Section I
WTO Members' Use of Dispute Settlement
System

The United States has filed 56 complaints, or almost a third of the 187 complaints filed as of April 2000. The European Union (EU) was the next most frequent filer, with 49 complaints or 26 percent of the total. Over a third of the U.S. and EU cases were against each other.



WTO Members as Defendants in 150 Distinct Matters, 1995-2000



Note: Percents do not add up to 100 percent because of rounding. In some cases, multiple complaints are initiated against a WTO member about the same "distinct matter." Thus, WTO members initiated 187 complaints regarding 150 distinct matters, a number of which are still pending.

Source: WTO data.

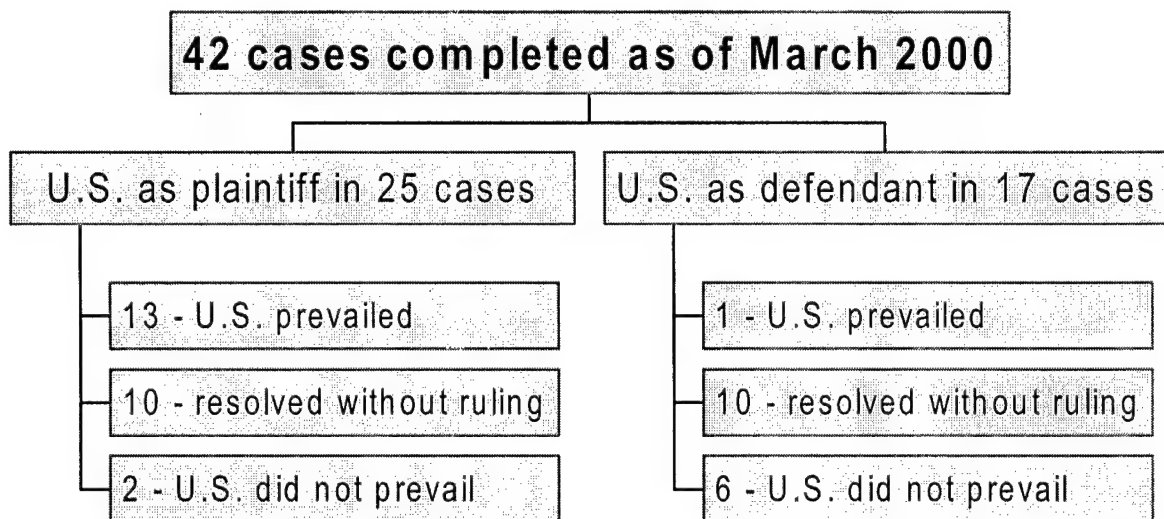
Briefing Section I
WTO Members' Use of Dispute Settlement
System

The United States was the most frequent defendant in WTO dispute settlement cases. The 187 complaints filed pertained to 150 distinct matters; in some cases, multiple complaints were filed against the same defendant. Of these 150 matters, 25 percent, or 38 cases, were filed against the United States, a number of which are still pending. The EU was the second most frequent defendant, with 26 cases filed against it.

WTO Dispute Settlement Cases Involving the United States



Outcome of U.S. Cases in the WTO



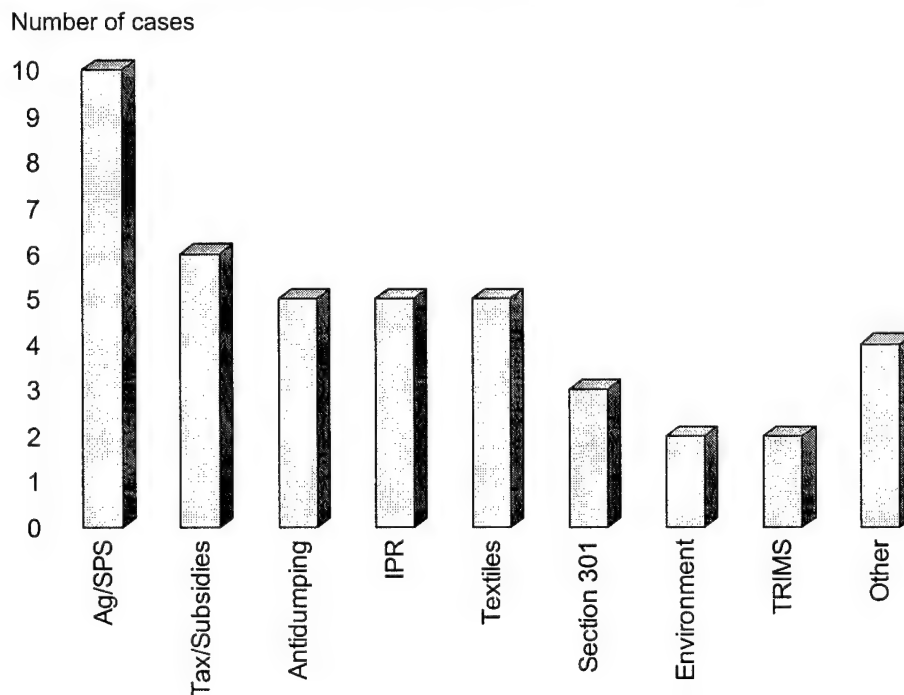
Source : Office of the U.S. Trade Representative.

Briefing Section II
WTO Dispute Settlement Cases Involving the
United States

Of the 150 distinct matters WTO members brought to the WTO, 42 cases involving the United States were completed as of March 2000. The United States was a plaintiff in 25 of these completed cases and a defendant in 17 cases. Completed cases include those that have gone through WTO litigation with a panel or appellate body ruling and cases that were resolved without a WTO ruling.



Areas in WTO Agreements Addressed in U.S. Cases



Legend

Ag/SPS = Agriculture, and sanitary and phytosanitary issues (human, animal, and plant health)

IPR = Intellectual property rights (such as patent protection)

TRIMS = Trade-related investment measures (such as countries requiring that foreign firms limit their imports to the amount they export).

Note: Section 301 of the Trade Act of 1974 (19 U.S.C. 2155) addresses foreign unfair trade practices affecting U.S. exports of goods or services.

Source: GAO analysis.

Briefing Section II
WTO Dispute Settlement Cases Involving the
United States

The 42 completed cases involving the United States covered eight general areas. One-quarter of the cases involved agriculture and sanitary and phytosanitary issues (human, animal, and plant health).



Agreed-to Changes in Foreign Practices

- Other WTO members agreed to change their practices in about three-quarters of 25 cases United States filed against them.
 - The following types of changes in foreign practices were agreed to:
 - Equalization of taxes on foreign and domestic goods
 - Removal of import barriers
 - Increases in intellectual property protection
 - Removal of trade-related investment measures
-

Source: GAO analysis.

The 25 cases that the United States filed with the WTO resulted in several types of changes in foreign laws, regulations, or practices. For example, in one case involving a tax on imported liquor, Japan began lowering taxes and tariffs on distilled spirits in 1998 after a WTO ruling found that Japan had discriminated against imports. In another case, Japan lifted a varietal testing requirement for imports of apples, cherries, and other fruits at the end of 1999 after a WTO ruling found that the requirement was maintained without sufficient scientific evidence. As a result, U.S. exports of these fruits recently entered the Japanese market, with shipments in December 1999 and March 2000.

In a case the United States filed with the WTO challenging inadequate intellectual property protection for pharmaceuticals and agricultural chemicals, India passed legislation in March 1999 to establish a filing system for patent applications on these products and to grant exclusive marketing rights to the patent applicant. The WTO ruled that these changes were called for under the Uruguay Round agreement on intellectual property rights. Pakistan agreed to make similar changes to settle another WTO case filed by the United States. In a case involving investment measures that may limit or distort trade in the auto sector, Indonesia eliminated local content requirements and other trade-restricting measures in 1999 after a WTO ruling found Indonesia had discriminated against foreign investors.



Commercial Effects of Foreign Changes

- The United States challenged other WTO members' practices in 25 cases:
 - 14 cases provided U.S. commercial benefits through
 - greater market access
 - stronger protection of intellectual property rights

Source: GAO analysis.

Briefing Section II
WTO Dispute Settlement Cases Involving the
United States

Of the 25 cases that the United States filed, 14 resulted in commercial benefits to the United States, either through greater market access or stronger intellectual property protection. For example, in a case involving Korean standards for food imports, Korea made changes in its food code in 1995 and 1996 after a WTO case was filed. Korea's standard had previously kept out approximately \$87 million of U.S. chilled beef exports and \$79 million of U.S. pork exports, according to Department of Agriculture estimates. Also, in a case challenging Japan's inadequate time period for protecting copyrights on sound recordings, Japan changed its copyright law in 1996 after a WTO ruling. As a result of this change, U.S. sound recordings will be protected for a 50-year period, including retroactively. The U.S. recording industry estimated that these protections are worth about \$500 million annually, based on lost sales in 1995.



Commercial Effects of Foreign Changes (cont.)

- In 25 cases U.S. filed (continued):
 - 9 cases had limited commercial benefits
 - Other barriers existed
 - Compliance with ruling incomplete or disputed
 - United States brought cases to uphold trade principles
 - 2 cases where United States did not prevail
 - 1 failed to gain greater market access
 - 1 was mitigated by separate agreement
-

Source: GAO analysis.

In the 11 other cases that the United States filed with the WTO dispute settlement body, 9 had limited commercial benefits, either because (1) other barriers existed; (2) implementation of the WTO ruling was incomplete or disputed; or (3) the case was brought mainly to uphold trade principles. Regarding cases where other foreign barriers existed, the United States challenged Canadian subsidies and import barriers in its

dairy market. Among other modifications, Canada changed its tariff-rate quota system,¹ which the U.S. dairy industry estimated could increase U.S. exports by \$45 million. However, the U.S. dairy industry cannot take advantage of these changes until the United States and Canada conclude separate, ongoing negotiations on fluid milk standards. Currently, neither country can export fluid milk to the other (except in retail size containers) due to differences in the two countries' standards.

Regarding WTO rulings whose implementation is incomplete or disputed, in two high-profile cases the EU decided not to fully comply with WTO rulings involving imports of bananas and hormone-treated beef. In addition, as of early June, Australia had not complied with a 1999 WTO ruling that maintained that Australia had provided an improper export subsidy grant to a leather manufacturer; the WTO had recommended that the grant be repaid. The United States and Australia have been negotiating a compliance plan. Also, in a case primarily involving trade principles rather than commercial interests, the United States filed a case against Hungary involving agricultural export subsidies, although U.S. products do not directly compete with the affected Hungarian exports. According to the Office of the U.S. Trade Representative, the case was brought to protect the integrity of the Uruguay Round Agreement on Agriculture. The Office maintained that Hungary was in violation of the agreement's provisions limiting these subsidies.

The United States initiated two WTO cases with high commercial stakes that it lost. In the first case, involving alleged trade restrictions in Japan's film and photographic supplies market, the United States failed to gain greater access to this market as a result of the loss. In the other case, the United States challenged an EU change in customs classification of local area network equipment that resulted in higher tariffs for U.S. exports. Although the United States lost the case, the effects of the loss were mitigated by the WTO's 1997 Information Technology Agreement, which made U.S. exports of this equipment duty free.

¹A tariff-rate quota is the application of a lower tariff rate for a specified quantity of imported goods. Imports above this specified quantity face a higher tariff rate.



Agreed-to Changes in U.S. Laws

- In 5 of the 17 cases where the United States was defendant, two U.S. laws, two U.S. regulations, and one set of U.S. guidelines were subject to change. Changes to date have been minor.

- The two laws included:
 - Textile and apparel rule of origin law
 - Visa provisions of Helms-Burton Act

source: GAO analysis.

Out of the 17 WTO cases in which U.S. practices were challenged, only one resulted in a change in U.S. law, and that change was relatively minor. In another case, the United States pledged to seek from Congress presidential authority to waive certain provisions of a law. However, Congress has yet to grant the President this authority.

Briefing Section II
WTO Dispute Settlement Cases Involving the
United States

Regarding the one change in U.S. law, the United States amended a 1996 rule of origin law for determining the country of origin of U.S. textile and apparel imports. The United States made this change in May 2000 in response to a WTO case filed by the EU. The amendment changed the country of origin of certain fabrics including silk, and of certain goods such as scarves, from where the raw fabric was made, to where the product was both dyed and printed with two additional finishing operations.² The EU maintained that the 1996 law's criteria for determining country of origin affected its quota-free access to the United States. This is because raw fabric is often produced in countries subject to U.S. quotas, such as China. According to Department of Commerce data, the affected EU exports to the United States are relatively small.

In another case, the EU challenged certain aspects of a U.S. law involving trade sanctions against Cuba. The United States and the EU reached an agreement in 1997 before a WTO dispute settlement panel ever met. Among other things, the EU agreed to drop the dispute settlement case in return for a U.S. pledge to seek from Congress presidential authority to waive title IV of the Helms-Burton Act,³ which authorizes denial of U.S. visas to persons involved in trafficking in confiscated Cuban property when certain conditions are met. Congress has yet to grant the President authority to waive title IV.

²22 U.S.C. section 3592(b)(2) was amended by a provision in the Trade and Development Act of 2000, Public Law 106-200, section 405.

³22 U.S.C. section 6091.



Agreed-to Changes in U.S. Regulations and Guidelines

- As defendant in 17 completed cases, the United States agreed to change a regulation or guideline in 3 cases:
 - Environmental Protection Agency gasoline regulation
 - Antidumping regulation
 - Endangered sea turtle guidelines

Source: GAO analysis.

Two U.S. regulations have been subject to change as a result of WTO rulings. First, in a case brought by Venezuela and Brazil, the Environmental Protection Agency (EPA) changed a regulation implementing the 1990 Clean Air Act pertaining to the cleanliness of gasoline.⁴ EPA modified the regulation in 1997 to give foreign suppliers the option of using a baseline

⁴40 C.F.R. part 80.

for gas cleanliness, based on their own performance rather than on an EPA-established baseline (this treatment was already afforded to domestic suppliers). EPA also put in place a mechanism to adjust the requirements if the overall cleanliness of gas imports declines. Brazil and Norway, which account for 0.18 percent of U.S. gas supplies, are currently the only countries exporting to the United States under this option.

Also, as a result of a case brought by Korea involving dynamic random access memory (DRAM) semiconductors, the Department of Commerce in 1999 changed its standard for lifting an antidumping order⁵ to conform to WTO antidumping provisions.⁶ The United States had imposed duties on certain Korean imports of these semiconductors after it determined that they were being dumped in the U.S. market. The WTO found that the previous U.S. standard placed too high a burden of proof on the party contesting the continuation of an antidumping order. After the U.S. regulation was changed, Commerce conducted another review of Korean DRAM imports, and Commerce still found the likelihood of continued dumping and kept the antidumping order in place. At Korea's request, a panel is now examining U.S. compliance with the WTO ruling.

Finally, as a result of a WTO case challenging a U.S. ban on imports of shrimp harvested in a manner harmful to endangered sea turtles, in July 1999 the State Department revised a set of certification guidelines.⁷ The revision provided more transparency (openness) and due process in making decisions to grant countries' certification to export shrimp to the United States. This change was very minor and, throughout the case, U.S. restrictions on shrimp imports remained in effect. However, one of the plaintiffs—Malaysia—has reserved its right to challenge U.S. compliance with the WTO ruling.

⁵"Dumping" is generally defined as the sale of an exported product at a price lower than that charged for a like product in the "home" market of the exporters or at a price below cost. An antidumping order imposes additional duties on imports when dumping is found.

⁶19 C.F.R. sections 351-222.

⁷64 Federal Register 36936 (July 8, 1999). According to the Department of State, these guidelines implemented section 609 of Public Law 101-162 relating to the protection of sea turtles in shrimp trawl fishing operations and are binding for countries that wish to export shrimp to the United States.



Commercial Effects of U.S. Changes

- WTO members challenged U.S. practices in 17 cases:
 - 5 cases United States lost had limited economic consequences
 - gas and turtle cases - primarily environmental, not commercial, concerns
 - 2 textile cases - U.S. restraints removed, but limited effect
 - DRAM case - U.S. antidumping duty maintained
 - 1 case United States lost (tax treatment of U.S. foreign sales corporations) - has high commercial stakes, but yet to be implemented
 - 11 cases were resolved or U.S. won
 - 5 with potentially high commercial stakes
 - all had limited or no commercial effect

Source: GAO analysis.

In the 17 cases in which the United States was a defendant, the United States lost 6 cases, 5 of which had limited commercial consequences. The sixth case, challenging provisions of U.S. tax law regarding foreign sales corporations, has potentially very high commercial stakes. The United States provides tax exemptions to a wide variety of companies on exported products used abroad. In this case, a February 2000 WTO ruling found that these tax provisions constituted prohibited export subsidies. The United States has not fully determined how it will implement the WTO's decision.

Of the 11 WTO cases filed against the United States that were resolved without a panel ruling or that the United States won, 5 had potentially high commercial stakes. However, the outcomes of all 11 cases had a limited or no commercial effect. For example, one of these high-stakes cases involved a challenge by Mexico to the initiation of a U.S. antidumping investigation on imports of certain fresh tomatoes. The U.S. International Trade Commission reported that imports of fresh tomatoes from Mexico were \$452 million, or almost 36 percent, of the \$1.27 billion U.S. market in 1995. The Commerce Department and the U.S. International Trade Commission made preliminary determinations that the Mexican imports were being sold at less than their fair value and were causing material injury to the U.S. industry. If the final investigations upheld these findings, the Commerce Department could have placed duties on these imports to raise their price up to the fair market value. Mexico requested WTO consultations with the United States about this issue. Commerce, however, resolved the matter with a formal commitment by Mexican growers not to sell their exports below a certain price. This agreement was reached to eliminate the injurious effects of the dumped imports on the U.S. industry.

The remaining six cases resulted in some U.S. government action, with minimal commercial effect. For example, in a case challenging U.S. duties on imports of urea (primarily used as a fertilizer) from the EU, the United States removed the duties after it found that U.S. industry was not interested in maintaining them.



Conclusions

- To date, United States has gained more than it has lost in the WTO dispute settlement system
 - Impact on United States should not be judged by wins and losses or commercial value alone
 - Not enough cases to fully evaluate the system
 - Some high-profile cases for United States are in the pipeline
-

Source: GAO analysis.

Our analysis shows that the United States has gained more than it has lost in the WTO dispute settlement system to date, for several reasons. First, the United States has been able to effect changes in several foreign laws, regulations, and/or practices that it considered to be restricting trade. Further, several of the cases in which the United States prevailed provided commercial benefits to U.S. exporters or investors. In addition, WTO rulings have upheld several trade principles that are important to the United States, such as the patent protection provisions of the Uruguay Round agreement on intellectual property rights and provisions in the Agreement on Agriculture to eliminate export subsidies.

The dispute settlement system's impact on the United States should not be evaluated solely on the basis of U.S. wins and losses. First, some winning cases do not result in the desired outcomes. For example, the EU decided not to fully comply with two WTO decisions involving bananas and hormone-treated beef and instead face U.S. retaliation. Conversely, some losses are only partial, as in the case regarding Korean DRAM semiconductors where the U.S. antidumping order being challenged was maintained despite an adverse WTO ruling. In addition, some losing cases actually uphold WTO principles important to the United States, as in the case involving endangered sea turtles, which expressly upheld provisions that protect the conservation of natural resources, including sea turtles. Moreover, the United States derives systemic benefits from a well-functioning multilateral dispute settlement system, even if it does lose some cases.

It is important to note, however, that there have not yet been a sufficient number of WTO dispute settlement cases to fully evaluate the system. In addition, the outcomes of some important pending WTO cases could be problematic for the United States, including several cases that challenge various aspects of U.S. trade laws, such as U.S. antidumping laws.

Commercial Consequences in 42 WTO Dispute Settlement Cases Involving the United States

Cases Filed by the United States

In the 25 disputes the United States filed with the World Trade Organization (WTO), 14 cases resulted in commercial benefits to the United States, either by achieving greater market access or stronger intellectual property protection (see table 1). In nine cases, the United States gained limited commercial benefits, either because (1) other trade barriers existed; (2) implementation of the WTO ruling was incomplete or disputed; or (3) the case was mainly brought to uphold trade principles (see table 2). Finally, the United States lost two cases with high commercial stakes.

Table 1: Breakdown of 14 Cases the United States Filed, With Commercial Benefits

Defendant	Subject of case	Type of commercial benefit	
		Greater market access	Stronger IPR protection
Korea	Shelf-life standards for agricultural products	X	
Japan	Taxes on distilled spirits	X	
EU	Tariffs on grain	X	
Canada	Import ban and tax measures on split-run magazines ^a	X	
Turkey	Taxation of foreign films	X	
Indonesia	Trade-distorting investment measures in auto and auto-parts market	X	
Philippines	Tariff-rate quotas ^b on pork and poultry	X	
Japan	Measures affecting imports of fruits	X	
India	Import restrictions on industrial, textile, and agricultural products	X	
Japan	Extension of copyright protection on sound recordings		X
Pakistan	Implementation of patent "mailbox" provision ^c		X
Portugal	Patent term length		X
India	Implementation of patent "mailbox" provision ^c		X
Sweden	Civil procedures for IPR enforcement		X

Legend

IPR = Intellectual property rights

^aA split-run edition of a magazine is one that is sold outside the home-market and contains advertising directed at the foreign market.

^bA tariff-rate quota is the application of a lower tariff rate for a specified quantity of imported goods. Imports above this specified quantity face a higher tariff rate.

^cA patent mailbox is a system for filing patent applications.

Source: GAO analysis.

Appendix I
Commercial Consequences in 42 WTO
Dispute Settlement Cases Involving the
United States

Table 2: Breakdown of Nine Cases the United States Filed, With Limited Commercial Effects

Defendant	Subject of case	Reasons for limited commercial effects		
		Other barriers existed ^a	Implementation incomplete or disputed	U.S. filed case primarily to uphold trade principles
Argentina	Specific duties on textiles and apparel and taxes on other goods	X		
Korea	Taxes on distilled spirits	X		
Canada	Export subsidies and import quotas on dairy products	X		
EU	Banana import regime		X	
EU	Beef hormone ban		X	
Australia	Export subsidies for leather producers		X	
Mexico	Antidumping investigation of high-fructose corn syrup		X	
Hungary	Agricultural export subsidies			X
Brazil	Trade-distorting investment measures in auto and auto-parts market			X

^aArgentina replaced its WTO-inconsistent duties and taxes with WTO-consistent duties at their highest bound rates, or tariff rate ceiling commitments under WTO. Korea complied with the WTO ruling by increasing its taxes on domestic products rather than lowering them significantly on imported goods. Canada modified its tariff-rate quota regime on fluid milk, but the U.S. dairy industry cannot take advantage of this change until the United States and Canada conclude separate, ongoing negotiations on fluid milk standards. Currently, neither country can export fluid milk to the other (except in retail size containers) due to differences in the two countries' standards.

Source: GAO analysis.

The two cases that the United States filed but in which it did not prevail were the Japanese film import barriers case in which the United States failed to gain greater market access and the EU computer equipment customs classification case, whose loss was mitigated by provisions of the 1997 Information Technology Agreement that made the affected equipment duty free.

Cases Filed Against the United States

Other WTO members brought 17 cases against the United States. In 11 cases, the disputes were resolved without a WTO ruling, or the United States prevailed. Some of these cases had high commercial stakes, but all were resolved with limited or no commercial effect (see table 3). In the six

Appendix I
Commercial Consequences in 42 WTO
Dispute Settlement Cases Involving the
United States

cases where the United States did not prevail, five cases had limited commercial consequences, while one case where the ruling is yet to be implemented has potentially high commercial stakes (see table 4).

Table 3: Commercial Stakes and Outcome of 11 Cases Resolved Without a Ruling, or Where United States Prevailed

Defendant	Plaintiff	Subject of case	Commercial effect	
			Potentially high commercial stakes	Outcome had limited or no commercial effect
United States	EU	Sections 301-310 of U.S. Trade Act of 1974 (U.S. prevailed)	X	X
United States	Japan	Import duties on automobiles from Japan	X	X
United States	Mexico	Antidumping investigation on tomatoes from Mexico	X	X
United States	EU	Helms-Burton Act	X	X
United States	EU	1989 section 301 retaliation on tomatoes and other products from EU	X	X
United States	EU	Antidumping duties on urea from the EU		X
United States	Korea	Antidumping duties on color televisions from Korea		X
United States	India	Import restraint on wool coats from India		X
United States	EU	Rules of origin for textile and apparel products from EU		X
United States	EU	USDA ban on imports of EU-origin poultry and poultry products		X
United States	Canada	Measures affecting imports of cattle, swine, and grain from Canada		X

Legend

USDA = U.S. Department of Agriculture

Source: GAO analysis.

Appendix I
Commercial Consequences in 42 WTO
Dispute Settlement Cases Involving the
United States

Table 4: Commercial Effects of Six Cases Where the United States Did Not Prevail

Defendant	Plaintiff	Subject of case	Commercial effects			
			Primarily environmental rather than economic concerns	Removal of U.S. import restraints with limited commercial effect	Antidumping duties maintained with no commercial effect	Yet to be implemented, but potential for large commercial effect
United States	Venezuela, Brazil	Gasoline imports	X			
United States	India, Malaysia, Pakistan, Thailand, Philippines	Ban on shrimp imports to protect sea turtles	X			
United States	Costa Rica	Import restraints on underwear		X		
United States	India	Import restraints on wool shirts and blouses		X		
United States	Korea	Antidumping duties on DRAMs from Korea			X	
United States	EU	Tax treatment of U.S. foreign sales corporations				X

Legend

DRAM = Dynamic Random Access Memory

Source: GAO analysis.

Objectives, Scope, and Methodology

The Chairman of the House Ways and Means Committee requested that we review the WTO's dispute settlement system, focusing on WTO member countries' use of the system over the past 5 years. In conducting the work, we examined (1) how WTO members have used the new system, focusing primarily on cases involving the United States and (2) the impact of these cases on foreign trade practices and U.S. laws and regulations, and their overall commercial effects.

To examine how WTO members have used the system over the past 5 years, we analyzed aggregate WTO data on member participation.

To evaluate the impact on U.S. laws and regulations and foreign practices, we examined 42 cases involving the United States that the Office of the U.S. Trade Representative identified as completed as of March 16, 2000. Completed cases included those that had gone through WTO litigation with a panel and/or appellate body ruling and cases that were resolved without a WTO ruling. To determine the impact of the cases on U.S. laws and regulations, and on foreign practices, we identified those cases whose outcome resulted in a change in laws, regulations, or guidelines or any permanent change in administrative procedures. We reviewed WTO dispute settlement documents including requests for consultations, panel and appellate body decisions, and other documents recording how the resolution of the cases was to be implemented. We also reviewed U.S. Federal Register notices where appropriate, as well as pertinent U.S. laws and regulations. We interviewed senior officials from the Office of the United States Trade Representative, including the Assistant U.S. Trade Representative for Monitoring and Enforcement, on the major issues and outcomes of all 42 cases. Regarding particular cases, we also met with high-level officials from the Departments of Agriculture, Commerce, State, and the Treasury, as well as the Environmental Protection Agency. We also spoke with industry representatives, interest groups, trade attorneys, and academics knowledgeable about WTO cases. To determine the changes in foreign practices, we relied on WTO and foreign government documents, as well as interviews with high-level U.S. government officials from the agencies previously listed. We did not conduct an independent analysis of the foreign changes or confirm those changes with the individual foreign governments.

To evaluate the commercial effects of the 42 cases, we examined the available evidence for each case concerning the U.S. commercial interests involved and the commercial consequences for the United States of the case's resolution. However, we did not formally assess the economic

impact on the United States of each dispute's outcome. It is difficult and resource intensive to distinguish among trade flows and competing factors affecting a particular market in order to isolate the economic impact of a WTO decision. Therefore, to present indicators of the commercial interests involved in the disputes, we gathered information on the market size, the level of investment, and the level of trade in the cases. In categorizing cases as having potentially high commercial stakes, we examined whether the case involved a high share of a particularly large market, large duties or sanctions, or wider implications for U.S. trade and trade policy. We also examined the trade barriers involved and the extent to which they were or might be removed. In cases involving intellectual property protection, we evaluated whether such protection had increased as a result of the case. In addition, we examined changes in trade flows of particular products after the resolution of a case.

To evaluate the commercial consequences of the cases, we also interviewed government officials and industry experts with the Office of the U.S. Trade Representative; the Departments of Agriculture, Commerce, Energy, State, and the Treasury; as well as officials from the U.S. International Trade Commission, the Patent and Trademark Office, and the National Marine Fisheries Service. We used trade, market, and other data from the Departments of Commerce, Energy, Agriculture, and the Treasury, as well as the U.S. International Trade Commission, and the National Marine Fisheries Service. When available, we examined government and industry group estimates of the economic impact of the cases; however, we did not verify their results.

We conducted our work from March through June 2000 in accordance with generally accepted government auditing standards.

GAO Contact and Staff Acknowledgments

GAO Contact

Elizabeth Sirois, (202) 512-8989

Acknowledgments

In addition to the person named above, Nina Pfeiffer, Shirley Brothwell, Howard Cott, Kim Frankena, Juan Gobel, Anthony Moran, Mary Moutsos, Richard Seldin, Tim Wedding, Katherine Woodward, and Rona Mendelsohn made key contributions to this report.

Ordering Information

The first copy of each GAO report is free. Additional copies of reports are \$2 each. A check or money order should be made out to the Superintendent of Documents. VISA and MasterCard credit cards are accepted, also.

Orders for 100 or more copies to be mailed to a single address are discounted 25 percent.

Orders by mail:
U.S. General Accounting Office
P.O. Box 37050
Washington, DC 20013

Orders by visiting:
Room 1100
700 4th St. NW (corner of 4th and G Sts. NW)
U.S. General Accounting Office
Washington, DC

Orders by phone:
(202) 512-6000
fax: (202) 512-6061
TDD (202) 512-2537

Each day, GAO issues a list of newly available reports and testimony. To receive facsimile copies of the daily list or any list from the past 30 days, please call (202) 512-6000 using a touchtone phone. A recorded menu will provide information on how to obtain these lists.

Orders by Internet:
For information on how to access GAO reports on the Internet, send an e-mail message with "info" in the body to:

info@www.gao.gov

or visit GAO's World Wide Web home page at:

<http://www.gao.gov>

To Report Fraud, Waste, or Abuse in Federal Programs

Contact one:

- Web site: <http://www.gao.gov/fraudnet/fraudnet.htm>
- e-mail: fraudnet@gao.gov
- 1-800-424-5454 (automated answering system)